



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA-HQ-OLEM-2021-0454, 0456, 0457, 0458, 0459, 0460, 0461, 0462, 0464, 0465, 0466 and 0467; FRL-9184-01-OLEM]

National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (“CERCLA” or “the Act”), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan (“NCP”) include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants or contaminants throughout the United States. The National Priorities List (“NPL”) constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency (“the EPA” or “the agency”) in determining which sites warrant further investigation. These further investigations will allow the EPA to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule adds 12 sites to the NPL, 11 to the General Superfund section and one to the Federal Facilities section.

DATES: The rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Contact information for the EPA Headquarters:

- Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue, NW; William Jefferson Clinton Building West, Room 3334, Washington, DC 20004, 202/566-0276.

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The contact information for the regional dockets is as follows:

- Holly Inglis, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Superfund Records and Information Center, 5 Post Office Square, Suite 100, Boston, MA 02109-3912; 617/918-1413.
- James Desir, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007-1866; 212/637-4342.
- Lorie Baker, Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mailcode 3HS12, Philadelphia, PA 19103; 215/814-3355.
- Sandra Bramble, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street, SW, Mailcode 9T25, Atlanta, GA 30303; 404/562-8926.
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- Michelle Delgado-Brown, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1201 Elm Street, Suite 500, Mailcode SED, Dallas, TX 75270; 214/665-3154.
- Kumud Pyakuryal, Region 7 (IA, KS, MO, NE), U.S. EPA, 11201 Renner Blvd., Mailcode SUPRSTAR, Lenexa, KS 66219; 913/551-7956.
- Victor Ketellapper, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 1595 Wynkoop Street, Mailcode 8EPR-B, Denver, CO 80202-1129; 303/312-6578.
- Eugenia Chow, Region 9 (AZ, CA, HI, NV, AS, GU, MP), U.S. EPA, 75 Hawthorne

Street, Mailcode SFD 6-1, San Francisco, CA 94105; 415/972-3160.

- Ken Marcy, Region 10 (AK, ID, OR, WA), U.S. EPA, 1200 6th Avenue, Suite 155,
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I. Background

A. What are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601-9675 (“CERCLA” or “the Act”), in response to the dangers of uncontrolled releases or threatened releases of hazardous substances, and releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (“SARA”), Public Law 99-499, 100 Stat. 1613 *et seq.*

B. What is the NCP?

To implement CERCLA, the EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (“NCP”), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, or releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. The EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes “criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action, for the purpose of taking removal action.” “Removal” actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases of hazardous substances, pollutants or contaminants (42 U.S.C. 9601(23)).

C. What is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of

hazardous substances, pollutants or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended. Section 105(a)(8)(B) defines the NPL as a list of “releases” and the highest priority “facilities” and requires that the NPL be revised at least annually. The NPL is intended primarily to guide the EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or contaminants. The NPL is of only limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Also, placing a site on the NPL does not mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by the EPA (the “General Superfund section”) and one of sites that are owned or operated by other Federal agencies (the “Federal Facilities section”). With respect to sites in the Federal Facilities section, these sites are generally being addressed by other federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody or control, although the EPA is responsible for preparing a Hazard Ranking System (“HRS”) score and determining whether the facility is placed on the NPL.

D. How are sites listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the HRS, which the EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening tool to evaluate the relative potential of uncontrolled hazardous substances, pollutants or contaminants to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), the EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. On January 9, 2017 (82 FR 2760), a

subsurface intrusion component was added to the HRS to enable the EPA to consider human exposure to hazardous substances or pollutants and contaminants that enter regularly occupied structures through subsurface intrusion when evaluating sites for the NPL. The current HRS evaluates four pathways: ground water, surface water, soil exposure and subsurface intrusion, and air. As a matter of agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL. (2) Each state may designate a single site as its top priority to be listed on the NPL, without any HRS score. This provision of CERCLA requires that, to the extent practicable, the NPL include one facility designated by each state as the greatest danger to public health, welfare or the environment among known facilities in the state. This mechanism for listing is set out in the NCP at 40 CFR 300.425(c)(2). (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed without any HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- The EPA determines that the release poses a significant threat to public health.
- The EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

The EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658) and generally has updated it at least annually.

E. What happens to sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the “Superfund”) only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). (“Remedial actions” are those “consistent with a permanent remedy, taken instead of or in addition to removal actions” (40 CFR 300.5).)

However, under 40 CFR 300.425(b)(2), placing a site on the NPL “does not imply that monies

will be expended.” The EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

F. Does the NPL define the boundaries of sites?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so. Indeed, the precise nature and extent of the site are typically not known at the time of listing.

Although a CERCLA “facility” is broadly defined to include any area where a hazardous substance has “come to be located” (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. However, the NPL site is not necessarily coextensive with the boundaries of the installation or plant, and the boundaries of the installation or plant are not necessarily the “boundaries” of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location where that contamination has come to be located, or from where that contamination came.

In other words, while geographic terms are often used to designate the site (e.g., the “Jones Co. Plant site”) in terms of the property owned by a particular party, the site, properly understood, is not limited to that property (e.g., it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (e.g., where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the “site”). The “site” is thus neither equal to, nor confined by, the boundaries

of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. In addition, the site name is merely used to help identify the geographic location of the contamination; and is not meant to constitute any determination of liability at a site. For example, the name “Jones Co. plant site,” does not imply that the Jones Company is responsible for the contamination located on the plant site.

EPA regulations provide that the remedial investigation (“RI”) “is a process undertaken...to determine the nature and extent of the problem presented by the release” as more information is developed on site contamination, and which is generally performed in an interactive fashion with the feasibility study (“FS”) (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, the HRS inquiry focuses on an evaluation of the threat posed and therefore the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination “has come to be located” before all necessary studies and remedial work are completed at a site. Indeed, the known boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted previously, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, it can submit supporting information to the agency at any time after it receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How are sites removed from the NPL?

The EPA may delete sites from the NPL where no further response is appropriate under

Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that the EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met:

- (i) Responsible parties or other persons have implemented all appropriate response actions required;
- (ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or
- (iii) The remedial investigation has shown the release poses no significant threat to public health or the environment and taking of remedial measures is not appropriate.

H. May the EPA delete portions of sites from the NPL as they are cleaned up?

In November 1995, the EPA initiated a policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and made available for productive use.

I. What is the Construction Completion List (CCL)?

The EPA also has developed an NPL construction completion list (“CCL”) to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) the EPA has determined that the response action should be limited to measures that do not involve construction (e.g., institutional controls); or (3) the site qualifies for deletion from the NPL. For more information on the CCL, see the EPA’s Internet site at <https://www.epa.gov/superfund/construction-completions-national-priorities-list-npl-sites-number>.

J. What is the Sitewide Ready for Anticipated Use measure?

The Sitewide Ready for Anticipated Use measure represents important Superfund accomplishments, and the measure reflects the high priority the EPA places on considering anticipated future land use as part of the remedy selection process. See Guidance for Implementing the Sitewide Ready-for-Reuse Measure, May 24, 2006, OSWER 9365.0-36. This measure applies to final and deleted sites where construction is complete, all cleanup goals have been achieved, and all institutional or other controls are in place. The EPA has been successful on many occasions in carrying out remedial actions that ensure protectiveness of human health and the environment for current and future land uses, in a manner that allows contaminated properties to be restored to environmental and economic vitality. For further information, please go to <https://www.epa.gov/superfund/about-superfund-cleanup-process#reuse>.

K. What is state/tribal correspondence concerning NPL listing?

In order to maintain close coordination with states and tribes in the NPL listing decision process, the EPA's policy is to determine the position of the states and tribes regarding sites that the EPA is considering for listing. This consultation process is outlined in two memoranda that can be found at the following website: <https://www.epa.gov/superfund/statetribal-correspondence-concerning-npl-site-listing>.

The EPA has improved the transparency of the process by which state and tribal input is solicited. The EPA is using the Web and where appropriate more structured state and tribal correspondence that: 1) Explains the concerns at the site and the EPA's rationale for proceeding; 2) requests an explanation of how the state intends to address the site if placement on the NPL is not favored; and 3) emphasizes the transparent nature of the process by informing states that information on their responses will be publicly available.

A model letter and correspondence between the EPA and states and tribes where applicable, is available on the EPA's website at <https://www.epa.gov/superfund/statetribal-correspondence-concerning-npl-site-listing>.

II. Availability of Information to the Public

A. May I review the documents relevant to this final rule?

Yes, documents relating to the evaluation and scoring of the sites in this final rule are contained in dockets located both at the EPA headquarters and in the EPA regional offices.

An electronic version of the public docket is available through <https://www.regulations.gov> (see table below for docket identification numbers). Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facilities identified in section II.D.

Docket Identification Numbers by Site:

Site Name	City/County, State	Docket ID Number
Westside Lead	Atlanta, GA	EPA-HQ-OLEM-2021-0454
North 5 th Street Groundwater Contamination	Goshen, IN	EPA-HQ-OLEM-2021-0456
Lower Neponset River	Boston/Milton, MA	EPA-HQ-OLEM-2021-0457
Bear Creek Sediments	Baltimore County, MD	EPA-HQ-OLEM-2021-0458
Michner Plating – Mechanic Street	Jackson, MI	EPA-HQ-OLEM-2021-0459
Southeast Hennepin Area Groundwater and Vapor	Minneapolis, MN	EPA-HQ-OLEM-2021-0460
Meeker Avenue Plume	Brooklyn, NY	EPA-HQ-OLEM-2021-0461
Bradford Island	Cascade Locks, OR	EPA-HQ-OLEM-2021-0462
Galey and Lord Plant	Society Hill, SC	EPA-HQ-OLEM-2021-0464
National Fireworks	Cordova, TN	EPA-HQ-OLEM-2021-0465
Unity Auto Mart	Unity, WI	EPA-HQ-OLEM-2021-0466
Paden City Groundwater	Paden City, WV	EPA-HQ-OLEM-2021-0467

B. What documents are available for review at the EPA Headquarters docket?

The headquarters docket for this rule contains the HRS score sheets, the documentation

record describing the information used to compute the score, a list of documents referenced in the documentation record for each site and any other information used to support the NPL listing of the site.

C. What documents are available for review at the EPA regional dockets?

The EPA regional dockets contain all the information in the headquarters docket, plus the actual reference documents containing the data principally relied upon by the EPA in calculating or evaluating the HRS score. These reference documents are available only in the regional dockets.

D. How do I access the documents?

You may view the documents, by appointment only, after the publication of this rule. The hours of operation for the headquarters docket are from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays. Please contact the regional dockets for hours. For addresses for the headquarters and regional dockets, see “Addresses” section in the beginning portion of this preamble.

E. How may I obtain a current list of NPL sites?

You may obtain a current list of NPL sites via the Internet at <https://www.epa.gov/superfund/national-priorities-list-npl-sites-site-name> or by contacting the Superfund docket (see contact information in the beginning portion of this document).

III. Contents of This Final Rule

A. Additions to the NPL

This final rule adds the following 12 sites to the NPL, 11 to the General Superfund section and one to the Federal Facilities section. All of these sites are being added to the NPL based on an HRS score of 28.50 or above.

General Superfund section:

State	Site Name	City/County
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GA	Westside Lead	Atlanta
IN	North 5 th Street Groundwater Contamination	Goshen
MA	Lower Neponset River	Boston/Milton
MD	Bear Creek Sediments	Baltimore County
MI	Michner Plating – Mechanic Street	Jackson
MN	Southeast Hennepin Area Groundwater and Vapor	Minneapolis
NY	Meeker Avenue Plume	Brooklyn
SC	Galey and Lord Plant	Society Hill
TN	National Fireworks	Cordova
WI	Unity Auto Mart	Unity
WV	Paden City Groundwater	Paden City

Federal Facilities section:

State	Site Name	City/County
OR	Bradford Island	Cascade Locks

B. What did the EPA do with the public comments it received?

The EPA reviewed all comments received on the sites in this rule and responded to all relevant comments. The EPA is adding 12 sites to the NPL in this final rule. All 12 sites were proposed for addition to the NPL on September 9, 2021 (86 FR 50515).

Comments on the Westside Lead and Bradford Island sites are being addressed in response to comment support documents available in the public docket concurrently with this rule. To view public comments on these sites, as well as the EPA's responses, please refer to the support documents available per docket ID number at <https://www.regulations.gov>. Below is a summary of significant comments received on the remaining sites.

Paden City Groundwater:

The EPA received seven comments on the Paden City Groundwater site. One comment did not oppose adding the site to the NPL and one comment supported listing. Five comments, in support of listing Paden City Groundwater, were erroneously received in the dockets for

Westside Lead, Bear Creek Sediments, and Bradford Island. Two additional comments were received in the Paden City Groundwater docket but were comments directed at the Meeker Avenue Plume and Galey and Lord Plant sites. Three comments supported listing the Paden City Groundwater site and expressed concerns related to the health impacts of tetrachloroethylene (PCE) contamination in groundwater, and one comment also expressed concerns about the financial impact of the need to purchase clean drinking water due to contaminated tap water. One commenter submitted comments regarding possible contamination in a basement and inquired whether there should be concern regarding the contamination.

Following listing, the EPA will be conducting additional sampling to determine the extent of the contamination, determine what actual risks are associated with the site, and take necessary actions to address any health impacts. The EPA performs a comprehensive risk assessment for the site as part of further investigations that typically follow listing. A subsequent stage of the Superfund process, the remedial investigation (RI), characterizes conditions and hazards at the site more comprehensively. The results of risk assessment activities will be considered during the evaluation of the need for remedial actions at the site. Additionally, the EPA has contacted one resident directly to address specific health concerns and to discuss the location of their properties in relation to the site contamination.

National Fireworks:

The EPA received three comments on the National Fireworks site from two private citizens and one non-profit organization. One private citizen and the non-profit organization expressed support for listing the National Fireworks site on the NPL due to the presence of contaminated groundwater. The non-profit organization stated that it was concerned that per- and polyfluorinated substances (PFAS) may be present in the groundwater in addition to chlorinated solvents due to the former use of industrial degreasers at the site. The third commenter, a private citizen, did not oppose adding the site to the NPL but expressed opposition to the rationale for listing the site. The commenter stated that the study used to support listing contained

inaccuracies and attributed contamination to an operation that was present for only two years even though other possible origins of the contamination existed. The commenter asserted that these other possible origins included an industrial park that had operated for 35 years and a railroad that operated in area until the mid-1990s.

The National Fireworks site qualifies for addition to the NPL because it has achieved an HRS score of 28.50 or greater, as is demonstrated in the HRS documentation record at proposal. Achieving a site score of greater than 28.50 indicates that the site is eligible for inclusion on the NPL and therefore may warrant further investigation. The HRS documentation record at proposal outlines the specific rationale for attributing the observed release to groundwater to the site consistent with the requirements in the HRS. The requirements in the HRS state that “some portion of the release must be attributable to the site.” As indicated in the attribution section of the HRS documentation record at proposal, attribution of at least some of the release is supported, in part, by the detection of explosives, which are unique to munitions manufacturing, in soil collected from the burn pit at the National Fireworks facility, demonstrating a lack of containment.

The HRS documentation record at proposal outlines the specific rationale for attributing the groundwater contamination to the manufacturing of explosives during World War II. Attribution of at least some of the contamination detected in groundwater is supported by the identification of the same contaminants in groundwater that were in site sources and the detection of explosives, which are unique to munitions manufacturing, in soil collected from the burn pit at the National Fireworks facility.

The EPA will be conducting additional sampling to determine the extent of the contamination. If additional source areas are discovered, as the third commenter insists, EPA will fully investigate and clean up those additional source areas. A subsequent stage of the Superfund process, the remedial investigation (RI), characterizes conditions and hazards at the site more comprehensively.

Galey and Lord Plant:

The EPA received a total of 16 comments submitted by private citizens, the mayor of the Town of Society Hill, the governing body of Darlington County, and the owners of a local farm near the Galey and Lord Plant site. One additional comment was received in the docket but was intended for the Southeast Hennepin Area Groundwater and Vapor docket and supported listing of that site. One comment from the governing body of Darlington County in support of listing the site was received but was submitted to the Paden City Groundwater docket. Comments received did not oppose adding the Galey and Lord Plant site to the NPL. The mayor of the Town of Society Hill submitted a comment that expressed support for listing and concern for human health, wildlife, and waterways. Two private citizens and the owners of the local farm submitted comments regarding the health impacts associated with contamination from the Galey and Lord facility. One of the commenters expressed concern for impacts to the commenter's health experienced directly following consumption of local well water. One comment from a private citizen on areas not a part of the site also included specific concerns regarding the impact of perfluorooctanesulfonic acid (PFOS) and perfluorooctanoic acid (PFOA) in groundwater. In addition to commenting on health impacts, the owners of the local farm expressed general concerns regarding the impact of contamination on its property and specific concern over the economic impact of the site and cleanup actions on its business. This commenter requested input about the party that initiated the cleanup process for this site. The South Carolina Department of Health and Environmental Control referred the Galey and Lord site to EPA for NPL consideration following an assessment of the plant site and the discovery of contamination in private drinking water wells near the fields where wastewater sludge from the plant was disposed of.

Following listing, the EPA will be conducting additional sampling to determine the extent of the contamination, determine what actual risks are associated with the site, and take necessary actions to address any health impacts. A subsequent stage of the Superfund process,

the remedial investigation (RI), characterizes conditions and hazards at the site more comprehensively. The EPA performs a comprehensive risk assessment for the site as part of further investigations that typically follow listing. The results of risk assessment activities will be considered during the evaluation of the need for remedial actions at the site. The EPA has contacted the concerned individual directly to address their specific health concerns.

Regarding economic impacts, the EPA notes that there are both costs and benefits that can be associated with listing a site. Among the benefits are increased health and environmental protection as a result of increased public awareness of potential hazards. In addition to the potential for federally financed remedial actions, the addition of a site to the NPL could accelerate privately financed, voluntary cleanup efforts. Listing sites as national priority targets also may give states increased support for funding responses at particular sites. As a result of the additional CERCLA remedies, there will be lower human exposure to high-risk chemicals, and higher quality surface water, ground water, soil, and air. Therefore, it is possible that any perceived or actual negative fluctuations in property values or development opportunities that may result from contamination may also be countered by positive fluctuations when a CERCLA investigation and any necessary cleanup are completed.

Bear Creek Sediments:

The EPA received 13 comments on the Bear Creek Sediments site. One additional comment was received from a private citizen but was intended for the Paden City Groundwater docket. The 13 comments received, from 11 private citizens and two non-profit organizations, expressed support for listing the site on the NPL. One commenter, a non-profit organization, requested that community engagement opportunities be available if the site is placed on the NPL. Another non-profit organization supported listing but included requests for further actions in its comment submission. The non-profit organization also submitted comments expressing environmental justice concerns. The non-profit organization made the following assertions regarding the contamination at the site:

- Data from a 2016 report suggested that an ecological risk exists in Bear Creek, warranting remediation.
- A decrease in total polycyclic aromatic hydrocarbons (PAH) concentrations with increasing distance from Sparrows Creek suggested that Sparrows Point influences PAH concentrations in that area.
- Bear Creek contains elevated metals concentrations including chromium, zinc, copper, and cadmium.
- Groundwater to surface water migration should be considered as a migration route for hazardous substances to Bear Creek due to the possible migration of contamination that appeared to occur via this route.
- Offshore concentrations of dissolved constituents suggested that groundwater fluxes were migrating from onshore source areas.
- The background levels should be withdrawn because locations upstream of Sparrows Point were not representative of background.
- The three background sediment sample locations used in the HRS evaluation were not representative of background contamination, in part, due to the tidal influence impacting Bear Creek and the lack of identification of possible upstream contributors to the contamination.

Following listing, the EPA will fully investigate the extent of contamination at the site. A subsequent stage of the Superfund process, the remedial investigation (RI), characterizes conditions and hazards at the site more comprehensively. The EPA noted in the HRS documentation record at proposal on the cover sheet that “[t]he NPL listing focuses solely on the releases to the Surface Water Migration Pathway into Bear Creek via Tin Mill Canal.” This same page of the HRS documentation record at proposal explains the rationale for why the ground migration pathway was not scored, indicating that it is not a pathway of concern because ground

water was not used as drinking water within four miles of the site source (i.e., the Tin Mill Canal).

The background levels and background sample locations presented in the HRS documentation record at proposal were appropriate for HRS scoring purposes. For HRS scoring, background samples are used to establish whether a release of contamination has occurred. The background sample locations are only used as a reference point to establish that a significant increase in contaminant levels in the downstream samples has occurred. Ideally, background samples are collected from an area outside of the influence of the contamination being evaluated, but with similar physical conditions. Accordingly, the area outside of the influence of the contamination used to represent background levels for HRS evaluation purposes may not necessarily coincide with natural background levels. For this site, samples from background locations upgradient of the contaminated samples “were used to establish background conditions and chemical compositions of the sediment materials upstream of the discharge point of [Tin Mill Canal].” Hence, the background level determination was consistent with the HRS and the site as preliminary defined for HRS scoring purposes (i.e., releases to Bear Creek from the Tin Mill Canal).

Many sites on the NPL are located in environmental justice, minority and/or low-income communities. Through the cleanup of these sites, the Superfund program has sought to ensure that residents do not bear a disproportionate share of the negative environmental consequences resulting from past industrial, governmental, and commercial operations, and that they have meaningful involvement in the decisions on how to clean up the site. Furthermore, as the site moves through the Superfund process, EPA will develop a community relations plan to ensure public involvement and participation in the cleanup.

C. Clarification of Figure for Meeker Avenue Plume Site

The EPA is providing a clarification to Figure 8 in the HRS Documentation Record for the Meeker Avenue Plume site. This figure provides the location of possible originating facilities

of subsurface contamination. Figure 8 has been modified to include the Empire State Varnish Company located at 38 Varick Street. The Empire State Varnish Company was identified as a possible originating facility in the supporting reference materials that provide the basis for Figure 8, but it was inadvertently omitted from that figure at proposal. EPA also notes that the facility was sufficiently identified as within the area of subsurface contamination as described in Figure 8 in the HRS documentation record at proposal. EPA is providing this clarification here to reflect that the facility is a possible originating facility of subsurface contamination at the Meeker Avenue Plume site.

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs

This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. This rule does not contain any information collection requirements that require approval of the OMB.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This rule listing sites on the NPL does not impose any obligations on any group, including small entities. This rule also does not establish standards or requirements that any

small entity must meet and imposes no direct costs on any small entity. Whether an entity, small or otherwise, is liable for response costs for a release of hazardous substances depends on whether that entity is liable under CERCLA 107(a). Any such liability exists regardless of whether the site is listed on the NPL through this rulemaking.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local or tribal governments or the private sector. Listing a site on the NPL does not itself impose any costs. Listing does not mean that the EPA necessarily will undertake remedial action. Nor does listing require any action by a private party, state, local or tribal governments or determine liability for response costs. Costs that arise out of site responses result from future site-specific decisions regarding what actions to take, not directly from the act of placing a site on the NPL.

F. Executive Order 13132: Federalism

This final rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. Listing a site on the NPL does not impose any costs on a tribe or require a tribe to take remedial action. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because this

action itself is procedural in nature (adds sites to a list) and does not, in and of itself, provide protection from environmental health and safety risks. Separate future regulatory actions are required for mitigation of environmental health and safety risks.

I. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations because it does not affect the level of protection provided to human health or the environment. As discussed in Section I.C. of the preamble to this action, the NPL is a list of national priorities. The NPL is intended primarily to guide the EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or contaminants. The NPL is of only limited significance as it does not assign liability to any party. Also, placing a site on the NPL does not mean that any remedial or removal action necessarily need be taken.

L. Congressional Review Act

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Provisions of the Congressional Review Act (CRA) or section 305 of CERCLA may alter the effective date of this regulation. Under 5 U.S.C. 801(b)(1), a rule shall not take effect, or

continue in effect, if Congress enacts (and the President signs) a joint resolution of disapproval, described under section 802. Another statutory provision that may affect this rule is CERCLA section 305, which provides for a legislative veto of regulations promulgated under CERCLA. Although INS v. Chadha, 462 U.S. 919, 103 S. Ct. 2764 (1983), and Bd. of Regents of the University of Washington v. EPA, 86 F.3d 1214, 1222 (D.C. Cir. 1996), cast the validity of the legislative veto into question, the EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives.

If action by Congress under either the CRA or CERCLA section 305 calls the effective date of this regulation into question, the EPA will publish a document of clarification in the *Federal Register*.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Barry N. Breen,
Acting Assistant Administrator,
Office of Land and Emergency Management.

For the reasons set out in the preamble, title 40, chapter I, part 300, of the Code of Federal Regulations is amended as follows:

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION
CONTINGENCY PLAN

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*; 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

2. Amend appendix B of part 300 by:

a. In Table 1, adding entries for “GA,” “Westside Lead”, “IN,” “North 5th Street Groundwater Contamination”, “MA,” “Lower Neponset River”, “MD,” “Bear Creek Sediments”, “MI,” “Michner Plating – Mechanic Street”, “MN,” “Southeast Hennepin Area Groundwater and Vapor”, “NY,” “Meeker Avenue Plume”, “SC,” “Galey and Lord Plant”, “TN,” “National Fireworks”, “WI,” “Unity Auto Mart”, and “WV,” “Paden City Groundwater” in alphabetical order by state; and

b. In Table 2, adding the entry for “OR,” “Bradford Island” in alphabetical order by state.

The additions read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1—GENERAL SUPERFUND SECTION

State	Site name	City/County	Notes (a)
**	**	**	*
GA	Westside Lead	Atlanta	
**	**	**	*
IN	North 5 th Street Groundwater Contamination	Goshen	
**	**	**	*

MA	Lower Neponset River	Boston/Milton	
**	**	**	*
MD	Bear Creek Sediments	Baltimore County	
**	**	**	*
MI	Michner Plating – Mechanic Street	Jackson	
**	**	**	*
MN	Southeast Hennepin Area Groundwater and Vapor	Minneapolis	
**	**	**	*
NY	Meeker Avenue Plume	Brooklyn	
**	**	**	*
SC	Galey and Lord Plant	Society Hill	
**	**	**	*
TN	National Fireworks	Cordova	
**	**	**	*
WI	Unity Auto Mart	Unity	
**	**	**	*
WV	Paden City Groundwater	Paden City	
**	**	**	*

^(a)A = Based on issuance of health advisory by Agency for Toxic Substances and Disease Registry (if scored, HRS score need not be greater than or equal to 28.50).

* * * * *

TABLE 2—FEDERAL FACILITIES SECTION

State	Site name	City/County	Notes (a)
**	**	**	*
OR	Bradford Island	Cascade Locks	
**	**	**	*

* * * * *

^(a)A = Based on issuance of health advisory by Agency for Toxic Substances and Disease Registry (if scored, HRS score need not be greater than or equal to 28.50).

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